CASE NO. 11-cv-2732-WOH-BLM

Doc. 7

Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1). On January

rights to free speech and expression, Fifth Amendment rights against double jeopardy and Fourteenth Amendment rights to due process are being violated based on his classification as "gang affiliated" by the CCA and his subsequent housing placement at the San Diego Correctional Facility. (ECF No. 1). Petitioner challenges his classification as well as "the procedures that they use here at CCA when housing federal detainees." *Id.* at 3.

A federal court may only grant a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 if a federal petitioner can demonstrate that he "is in custody in violation of the

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Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). A habeas corpus petition is the correct method for a prisoner to challenge "the very fact or duration of his confinement," and where "the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment." *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) is the proper method for a prisoner to challenge the conditions of his confinement. *See McCarthy v. Bronson*, 500 U.S. 136, 141-42 (1991) ("[A] § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody.").

Upon review of the Petition, the Court concludes that Petitioner is challenging the conditions of his confinement and not the "the fact or length of his custody." *McCarthy*, 500 U.S. at 142. Petitioner has not stated a cognizable habeas corpus claim pursuant to § 2241.

Accordingly, the Court **DISMISSES** the case without prejudice and with leave to amend. If Petitioner wishes to challenge the fact or duration of his confinement, he must, **no later than February 27, 2012,** file a First Amended Habeas Corpus Petition. If Petitioner wishes to challenge the conditions of prison life, he must:

- (1) file a new civil complaint pursuant to 42 U.S.C. § 1983, and
- (2) either pay the \$350 filing fee or file a motion to proceed in forma pauperis.

The Clerk of the Court is directed to mail Petitioner a 28 U.S.C. § 2241 First Amended Habeas Corpus Petition form, a 42 U.S.C. § 1983 Civil Complaint form, a Motion to Proceed In Forma Pauperis form, and a copy of this Order.

IT IS SO ORDERED.

DATED: January 26, 2012

WILLIAM Q. HAYES United States District Judge